

Remarks

Claim 2-36 are pending in this application.

Claims 2-7, 11, 13-17, 21, 23-25 and 30-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murphree et al., U.S. Patent No. 5,732,136 (hereinafter "Murphree") in view of Planke, U.S. Patent No. 5,902,984 (hereinafter "Planke").

Claims 8, 9, 10, 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murphree in view of Planke and further in view of Gomm et al., U.S. Patent No. 5,753,899.

Claims 12 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murphree in view of Planke and further in view of Brett, U.S. Patent No. 6,907,405.

Claims 26-29 and 33-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murphree in view of Planke and further in view of Moore, U.S. Patent No. 6,847,938.

Applicant has amended claims 2, 3, and 13 to more particularly define the invention. No new matter has been added and the amendments are fully supported and justified by the specification. Applicant respectfully traverses the rejections.

Applicant's invention, as defined by independent claims 2, 3, and 13, is directed towards methods and a system for performing a purchase transaction whereby a customer is given the ability to activate an account that can be associated with a certain percentage of a merchant's inventory. The percentage of inventory comprises proxy merchandise that can be exchanged for particular merchandise. For example, applicant's claimed invention allows a customer to purchase a gift card from a merchant by having the customer pay the merchant an amount of money representative of the amount to be placed into the gift card (as well as any applicable fees, taxes, etc.) and the merchant records the transaction as a sale. The merchant is able to record it as a sale because the gift card represents an account that holds a fungible percentage of the merchant's merchandise -- as opposed to unspent cash. The holder of the gift card may then exchange any portion of the fungible percentage of merchandise from the card for discrete merchandise (e.g., a stereo, clothing, food, books, etc.).

In the traditional paradigm of the above gift card example, the merchant would not be able to record a sale until the holder of a gift card associated with a cash account debits a respective amount of cash from the gift card account when

making a purchase. Applicant's invention solves this problem by treating the crediting of the gift card account as a purchase event.

Murphree refers to a debit card verification system in which certain ID properties are stored on a debit card and on a merchant's terminal. As the Examiner concedes, Murphree has nothing to do with the sale of a percentage of a merchant's inventory that comprises proxy merchandise that is then exchangeable for other merchandise from the merchant's inventory. Nor does Murphree show or suggest calculating and reporting average historical costs associated with sales of the inventory.

Planke refers to a merchandise dispensing arrangement in which a readable card is used to redeem a specific article of merchandise. According to Planke, each card is associated with a particular article of merchandise. The card is picked up by a customer that desires to purchase the specific article of merchandise associated with the card and brings it to a register where the customer pays for the specific article of merchandise and has the card validated. The validated card is read by a dispensing machine, which provides the specific article of merchandise upon confirming validation of the card.

The Examiner contends that, in Planke, "the validated symbol of the article on the readable card is a proxy merchandise that is exchangeable for other merchandise (the dispensed article) from the merchant's inventory" (Office Action, page 4, lines 6-8). Contrary to the Examiner's contention, applicant respectfully submits that the readable card represents a specific article of merchandise. According to Planke, the card can be redeemed for only the specific article of merchandise. It cannot be redeemed for anything other than that specific article of merchandise. In stark contrast, according to applicant's claims 2, 3, and 13, a purchase transaction takes place in which proxy merchandise, which is exchangeable for any other articles of merchandise in the merchant's inventory, is purchased.

Further, Planke fails to show or suggest crediting an account with the percentage of the merchant's inventory purchased as required by applicant's claims. Rather, Planke merely shows indicating on a card the identity of a specific article of merchandise and whether dispensing of the specific article of merchandise has been validated.

The Examiner further contends that because Planke refers to providing a receipt indicating a price paid, this

shows applicant's claimed feature of calculating and reporting average historical costs associated with the sales of the inventory. Contrary to the Examiner's contention, applicant respectfully submits that data gleaned from a single purchase transaction, by definition, cannot amount to a calculation of "average historical costs."

Therefore, whether taken alone or in combination, neither Murphree nor Planke show or suggest each and every element of applicant's independent claims 2, 3, and 13.

Moreover, applicant respectfully submits that there is no suggestion or motivation to combine the two completely disparate systems of Murphree and Planke. Murphree relates to a debit card system whereas Planke relates to a merchandise dispensing system where cards are used to represent specific articles of merchandise. These are two distinct and incompatible systems. There is no suggestion or motivation in either Murphree or Planke to be combined with one another.

Applicant respectfully submits that independent claims 2, 3, and 13 are therefore allowable over Murphree and Planke. Claims 4-12, and 14-36 are dependent from claims 3 and 13 and are therefore also allowable.

In view of at least the foregoing, applicant respectfully submits that this application is in condition for allowance. Accordingly, prompt reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Alex Shvarts', is written over a horizontal line.

Alexander Shvarts

Reg. No. 47,943

Attorney for Applicant

FISH & NEAVE IP GROUP

ROPES & GRAY LLP

Customer No. 1473

1251 Avenue of the Americas

New York, New York 10020-1105

Tel.: (212) 596-9000

Fax: (212) 596-9090